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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JENNIFER B.

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Real Party in Interest.

B192101

(Los Angeles County  
Super. Ct. No. LK04713)

ORIGINAL PROCEEDINGS in mandate. Robert Stevenson, Juvenile Court  
Referee. Petition denied.

Jennifer B., in pro. per., for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and Liana Serobian, Senior Deputy County Counsel, for Real Party in Interest.

Petitioner Jennifer B. is the natural mother of Robert B., a dependent of the juvenile court. By a petition for writ of mandate under California Rules of Court, rule 38.1 (rule 38.1), Jennifer challenges the juvenile court's order setting a hearing under section 366.26 of the Welfare and Institutions Code<sup>1</sup> to consider termination of parental rights concerning her children, and requests a stay of this hearing. Because Jennifer's petition does not comply with rule 38.1, we deny it and her request for a stay.

### **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

Robert was born to Jennifer in 1991. His alleged father is Robert C.<sup>2</sup> Prior to the underlying proceedings, Jennifer was the subject of five referrals to real party in interest Los Angeles County Department of Children and Family Services (DCFS). Three referrals involved allegations of physical abuse, and two involved allegations that Jennifer had been absent as a caregiver.

In addition, DCFS had twice initiated prior dependency proceedings on Robert's behalf. The first proceeding, which involved a substantiated allegation of general neglect by Jennifer, began in February 1992 and ended in August 1996. The second proceeding began in June 1998, and involved a substantiated allegation that Jennifer had been absent as a caregiver due to incarceration. During this

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> Robert C. did not appear during the underlying proceedings, and he is not a party to this petition.

proceeding, the juvenile court terminated reunification services, and placed Robert in long term foster care in January 2000. The juvenile court restored Robert to Jennifer's custody and subsequently terminated its jurisdiction in 2004.

In January 2005, Jennifer was arrested and charged with vehicle theft, grand theft of an automobile, receiving known stolen property, and possession of a controlled substance. After DCFS learned that she had been incarcerated, it discovered that Robert was living with Jennifer's neighbor, who also had been the subject of a DCFS case, and who acknowledged a prior arrest.

On March 9, 2005, DCFS filed a petition under section 300 on Robert's behalf, alleging that Jennifer had a history of substance abuse and criminal conduct, and that she had made inadequate plans for Robert's care during her incarceration. The juvenile court authorized Robert to be detained.

In connection with the jurisdictional and dispositional hearing on April 21, 2005, DCFS reported that Jennifer had a 25-year history of drug abuse and felony convictions for possession of controlled substances, possession of paraphernalia, and robbery. She had been diagnosed as suffering from bipolar mental disorder. Robert knew about Jennifer's drug use and criminal history. After her arrest in January 2005, he lived with three different nonrelatives before he was detained. His GPA in school was 1.143, and he had missed many days of school.

On April 21, 2005, the juvenile court sustained the petition (with amendments not relevant here), declared Robert a dependent of the court, and ordered DCFS to provide Jennifer with reunification services. Under the case plan, Jennifer was directed to participate in a drug rehabilitation program with testing, parenting classes, individual counseling, and conjoint counseling with Robert (if

recommended by a therapist). Jennifer was accorded monitored visitation with Robert, who had been placed in a foster home.

At the six-month review on October 20, 2005, DCFS reported that Jennifer was to be released from incarceration on November 2, 2005. Despite numerous attempts, a DCFS social worker had been unable to confirm Jennifer's participation in counseling or parenting classes. Jennifer had talked to Robert by phone twice a month. The juvenile court found that she was in partial compliance with the case plan and ordered DCFS to provide her with six more months of reunification services.

In connection with the 12-month review, DCFS reported that Jennifer had not complied with the case plan. In January 2006, a DCFS social worker gave a list of service providers to Jennifer, who told the social worker in February 2006 that none of the phone numbers for the providers was working. Thereafter, Jennifer did not contact DCFS. She failed to test for drugs three times -- each of which counted as a "dirty test" -- and tested positive for heroin and cocaine on March 24, 2006. In April 2006, the social worker determined that at least seven of the phone numbers on the list of service providers were working. On May 12, 2006, Jennifer was arrested for possession of cocaine and incarcerated.

DCFS also reported that Robert was doing well in his foster home. His GPA had risen during the reporting period to 3.5. Jennifer visited with Robert, but did not contact him for a month prior to April 13, 2006. She attended two sessions of conjoint counseling with him, and then missed all sessions after April 26, 2006.

At the 12-month review on June 15, 2006, DCFS recommended that the juvenile court terminate reunification services for Jennifer. Jennifer, who appeared at the review with her counsel, did not challenge the DCFS reports

filed in connection with the review, and submitted the matter without any argument. After admitting the DCFS reports into evidence, the juvenile court found that Jennifer was not in compliance with the case plan and that returning Robert to her custody would be detrimental to him. It terminated her reunification services and ordered a permanent plan hearing under section 366.26, which is set for October 12, 2006.

## **DISCUSSION**

### *A. Inadequate Petition*

We conclude that Jennifer's petition must be denied on the ground that it does not comply with rule 38.1. Under this rule, a petition "must be accompanied by points and authorities" that (1) summarize the significant facts, (2) state each point under a separate heading, (3) "support each point by argument and citation of authority," and (4) contain appropriate citations to the record. (Rule 38.1(a)(3), (b).)

Jennifer, who is proceeding in propria persona, has submitted a form petition that lacks the requisite points and authorities. She challenges the rulings at the 12-month review, asserting that the DCFS reports admitted at the review contain several "[i]nconsistencies & errors." The crux of this assertion is that the DCFS reports omitted or misstated information about her compliance with the case plan.<sup>3</sup>

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<sup>3</sup> Jennifer's petition states as "verified information" that she completed counseling and programs on parenting, substance abuse, and job skills while she was incarcerated in 2005; she submitted a certificate of completion to DCFS in December 2005; she actively participated in a drug counseling and rehabilitation program until her arrest in April 2006; she had only a single "dirty" drug test in April 2006; she attended a session of conjoint counseling with her son that was omitted from the DCFS reports; she tried to see Robert on a weekly basis, but his

She does not support this assertion with citations to the record, and we see none for it in the record. Her petition is otherwise devoid of argument -- properly accompanied by citations to legal authority and the record -- that her assertion constitutes a basis for reversing the juvenile court's rulings.

As the court indicated in *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 580 (*Glen C.*), the interests at stake in a rule 38.1 petition are of extreme importance to the petitioner, given that termination of reunification services ordinarily presages the termination of the petitioner's parental rights at the pending section 366.26 hearing. Accordingly, when, as here, an appellate court confronts a "bare-bones" petition that asserts factual errors in reports submitted by a social services agency, but lacks appropriate supporting argument, the court faces only problematic options. (78 Cal.App.4th at pp. 578-584.) It may (1) conduct an independent review of the record for error, (2) invite the petitioner's counsel to cure the deficiencies in the petition, or (3) summarily dismiss the petition. (*Ibid.*)

The court in *Glen C.* rejected alternative (1) because it would impose an extraordinary burden on the courts, and was not required by "constitutional principle or policy for appeals from orders adversely affecting child custody or parental status." (*Glen C., supra*, 78 Cal.App.4th at pp. 579-580.) It also rejected alternative (2), reasoning that this course of action did not comport with an attorney's professional obligation not to submit an inadequate petition in the first instance. (*Id.* at pp. 581-584.) It thus adopted alternative (3), following a determination that section 366.26 and the California Rules of Court permit summary dismissals of the petitions at issue. (*Glen C., supra*, 78 Cal.App.4th at pp. 580-582, 584.)

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foster parents denied her access to him; and the foster parents ignored her communications about Robert's well being.

Under the circumstances of this case, we too conclude that Jennifer's petition should be summarily denied. She is not represented by counsel in this writ proceeding, and thus the petition's defects cannot be cured absent an independent review of the record for error by this court. Moreover, even were we to address her assertion of error, we would determine that it fails. The record discloses that Jennifer appeared at the 12-month review with her counsel and did not object to the DCFS reports before the juvenile court. Nothing in her petition suggests she lacked an opportunity to assert the errors she now alleges in her petition. She has therefore waived any contention that the DCFS reports are incomplete or contain factual errors.

As the court explained in *In re Christina L.* (1992) 3 Cal.App.4th 404, 416: “““The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.” [Citation.]” (Quoting *Sommer v. Martin* (1921) 55 Cal.App. 603, 610; accord, *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365, fn. 6; see *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603 [“A party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do . . . .”].)

#### B. *Stay*

Jennifer also requests a temporary stay of the section 366.26 hearing. Under rule 38.1(g), we may issue this stay only upon “an exceptional showing of good cause.” Jennifer has not made this showing.

In asking for the stay, Jennifer indicates that she does not object to the section 366.26 hearing insofar as it might result in a legal guardianship or long term foster care for Robert. She seeks a delay of the hearing because it might result in the termination of her parental rights, citing the errors asserted in her petition and the fact that she will not be released from incarceration until January 2007, after the date set for the section 366.26 hearing.<sup>4</sup>

These are inadequate grounds for a stay. As explained above (see pt. A., *ante*), Jennifer's petition does not establish error in the orders terminating her reunification services and setting the section 366.26 hearing. Moreover, her current incarceration does not authorize a delay of the hearing so that she may cure her noncompliance with the case plan. As our Supreme Court stated in *In re Marilyn H.* (1993) 5 Cal.4th 295, 309, "[o]nce reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability," and the juvenile court is not required to consider the issue of reunification at the section 366.26 hearing. At this stage in the dependency proceedings, the child need "not wait for the parent to become adequate." (*Id.* at p. 310.)

Finally, a stay is unnecessary to ensure that Jennifer may attend the section 366.26 hearing. Under Penal Code section 2625, she is entitled to attend such a

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<sup>4</sup> Respondent suggests that Jennifer seeks a stay of any order terminating her parental rights. We disagree. Jennifer's form petition required her (1) to identify a *hearing date* relevant to her request, and (2) to state her reasons for the stay. She has indicated that her request concerns the hearing set for October 12, 2006, and she further states: "I have no objection on WIC section 366.26 on establishing legal guardianship & present identified placement for my son but I am requesting a tempor[ar]y stay on the termination of my parental rights for reason stated on item #8 of this petition [the asserted errors in the DCFS reports discussed above (see pt. A., *ante*)] & also because I am presently incarcerated & will be release[d] on January of 2007." We therefore construe Jennifer's request as one seeking a stay



hearing that seeks to terminate her parental rights upon proper notice to the juvenile court. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 621-624; Pen. Code, § 2625, subds. (b), (d).)

### **DISPOSITION**

The petition for writ of mandate and request for a stay are denied. This decision shall become final as to this court immediately upon its filing. (Cal. Rules of Court, rule 24(b)(3).)

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MANELLA, J.

We concur:

WILLHITE, Acting P.J.

SUZUKAWA, J.

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of the section 366.26 hearing, which may result in the termination of her parental rights.